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NO. 93-1561

# IN THE SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1993

BISHOP COLLINS, et al., *Petitioners*,

v.

GERALD THOMPSON, et al., *Respondents*.

## ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

1. Did the Court of Appeals correctly conclude that terms of the consent decree did not require a permanent population cap at the WSR, that the consent decree was "fully consummated" pursuant to its own terms, and that the decree should be vacated?

2. Did the Court of Appeals properly refuse to extend jurisdiction beyond the requirements of the consent decree in the absence of continuing constitutional violations?

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## ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## BRIEF IN OPPOSITION

### I. STATEMENT OF THE CASE

In 1981, Petitioners, a class of convicted male felons housed at the Washington State Reformatory (WSR), and Respondents, senior Washington prison officials, entered into a consent decree designed to improve the conditions of

confinement of that facility. Pursuant to the decree, Respondents studied and improved food preparation and service, medical screening, vocational and academic education, and job opportunities. *See* Petitioners' Appendix ("Petition App.") K. Petitioners do not dispute that Respondents met all of these terms.[1]

The consent decree also contained, as part of a "systemwide population reduction," a timetable for Respondents to "gradually reduce population between" April 1, 1981 and July 1, 1983 at WSR. Petition App. at K-3-5. The rate of reduction was based upon inmate population projections from 1981 until 1987. There was no provision in the decree for a permanent population cap or for setting population levels beyond July 1, 1983. Petition App. K.

Later, the district court extended the time period for complying with the population reduction schedule until 1987. The population was reduced to 656 inmates that year. Petition App. at A-3.

Finally, Article II ("JURISDICTION") of the consent decree provided for the termination of federal court supervision and jurisdiction:

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[1]In fact, Respondents have exceeded those requirements, voluntarily renovating and expanding the infrastructure, and improving safety and security measures, and recreational facilities at WSR. CR 623, 701-7.

> The parties stipulate to a continuation of this court's jurisdiction, and to the continued utilization of this court's Magistrate, for the purposes, and to the extent specified, below. Such *jurisdiction will continue until such time as this agreement*, on motion of either party, *is deemed fully consummated*. At the *close of jurisdiction*, orders will enter making a final judgment incorporating the terms herein. Commitments made herein are binding on plaintiffs, defendants, defendants' successors, officers, and agents.

Petition App. at K-3 (emphasis supplied). Article IV of the decree also anticipated that jurisdiction would eventually be "terminated". Petition App. at K-11.

Having "fully consummated" the decree, Respondents submitted their current (third) motion to vacate the decree to the United States District Court for the Western District of Washington, as provided for by Article II. CR 783-84; Petition App. at K-3, K-10-11. Petitioners argued that the district court should refuse to vacate the decree because 1) the decree required a permanent population cap and 2) Respondents would violate the decree in the future. The Petitioners thus requested perpetual supervision by the court. Petition App. at B-3-4.

In deciding Respondents' motion to vacate, Chief District Court Judge Rothstein examined the language of the decree and ruled that the decree required Respondents to "reduce the inmate population to 656", *not* to "maintai[n]" that population level.

Petition App. at B-2-3. Therefore, the decree was "fully consummated in 1987." *Id.*

As to Petitioners' second claim, the district court, reviewing considerable documentation concerning the conditions at WSR,[2] found that "there are no present violations of constitutional rights." Petition App. at B-5. Thus, "the court's continued intervention would be premised on the assumption that without judicial supervision, future violations will occur." *Id.*

The district court granted the motion to vacate and issued a final judgment dismissing the action, finding (1) the consent decree had been fully consummated, and (2) there was no other basis for jurisdiction. The court declined the invitation of Petitioners to impose a permanent population cap. Petition App. at B-8.

On appeal, Petitioners raised two issues:

> (1) whether the district court properly interpreted the consent decree and entered a final judgment "as contemplated by the parties," and (2) whether the district court should exercise continuing jurisdiction.

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[2]Respondents submitted a major study, "An Assessment of the Correctional Operations and Management of the Washington State Reformatory," by George Camp, an expert from the Criminal Justice Institute. Respondents also referenced other affidavits from previous litigation concerning the decree. Petitioners offered nothing.

Petition App. at A-5. The United States Court of Appeals for the Ninth Circuit addressed those two issues separately. Petition App. at A-5-9.

The Court of Appeals affirmed the district court, noting that under the "clear language of the decree," "the state was only required to reduce the inmate population to 656, not to maintain the population at that level." Petition App. at A-7.

The Court of Appeals, recognizing that Petitioners sought to maintain district court jurisdiction on an inactive basis in order to prevent future violations of constitutional rights, adopted Respondents' federalism arguments and refused "over-involvement" in the management of a state prison in the absence of any constitutional violations. Petition App. at A-9. Therefore, the Court of Appeals refused to extend the federal courts' supervision of WSR prison beyond the requirements of the decree.

The Petitioners request for en banc review of the panel's unanimous opinion was denied. Petition App. J.

This petition followed.

## II. REASONS FOR DENYING THE WRIT

The Petition for a Writ of Certiorari should be denied for three reasons. First, Petitioners' argument for review is

premised upon a misinterpretation of the Court of Appeals' opinion. Second, the Court of Appeals' opinion is consistent with precedent and presents no conflict with other circuits. Third, in view of the specific facts of this case, the opinion below was correct.

### A. The Petitioners Misrepresent The Opinion Below.

Petitioners' interpretation of the Court of Appeals' opinion is utterly untenable and misleading. Petitioners repeatedly claim that the Court of Appeals dissolved the decree *solely* because of the absence of ongoing constitutional violations at WSR. Petition at 10, 11, 12, 13, 14, 17-18 ("only" addressed constitutional issue), 19, 23-24, 26, 29, 30, 31-32 ("focussed obsessively" on the constitutional issues), 33-34, 40, 42 ("singular focus" on constitutional violations), 43. The Petitioners are incorrect.

Petitioners' interpretation of the Court of Appeals' opinion is clearly at odds with the opinion itself and the Petitioners' own arguments.[3] *See generally* Petition App. A. That court, like the district court before it, undertook two tasks in response to the issues framed by Petitioners.

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[3]Petitioners are internally inconsistent in their argument. They repeatedly assert throughout the Petition that the Court of Appeals relied "solely" or "obsessively" on the absence of Eighth Amendment violations, but later attempt to counter that court's interpretation of the decree. *See* Petition at 34-43.

First, the Court of Appeals addressed the issue of whether, according to the *terms* of the consent decree,[4] it should be vacated. Petition App. at A-5-7. The Court of Appeals looked at the rules borrowed from the appropriate Washington rules of contract interpretation, and examined the language of the decree. Petition App. at A-6-7. Contrary to Petitioners' repeated assertions, the Court of Appeals did *not* consider the lack of constitutional violations when it interpreted the language of the decree. Petition App. at A-6-7. The Court of Appeals found:

> We instructed the district court to *interpret the terms of the consent decree and enter a final judgment*. That court said that the only issue separating the parties was whether a final judgment should limit inmate population to 656. Because of the *clear language of the consent decree*, it found that the state was only required to reduce the inmate population to 656, not to maintain the population at that level. It also found that imposing a permanent population cap would require continuing jurisdiction and conflict with our clear order that jurisdiction end. *The district court properly examined the terms of the agreement and entered final judgment accordingly.*

Petition App. at A-6-7 (emphasis supplied).

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[4]The Court of Appeals made it clear that its interpretation of the decree was based on the terms of the decree. In fact, the heading for the discussion of the first issue was "The District Court Properly Entered Final Judgment Interpreting the Terms of the Decree As Ordered By This Court". Petition App. at A-6.

Only after determining that the decree was satisfied did the Court of Appeals decide if there was any other basis for continued jurisdiction over WSR, *i.e.*, the violation of constitutional rights. The lack of constitutional violations only played a role in the consideration of the second claim, not in interpreting the terms of the decree relative to its termination. *See* Petition App. at A-7-9. Only after interpreting the terms of the decree did the Court of Appeals affirm the district court's decision not to exercise federal jurisdiction over the state prison in the absence of constitutional violations.[5] Petition App. at A-7-9.

Petitioners also claim that the Court of Appeals "[i]nexplicably" focussed on the lack of Eighth Amendment violations in previous orders concerning limited remand. Petition at 29. Petitioners argue that the Court of Appeals required the district court to interpret the decree in light of *Toussaint v. McCarthy*, 926 F.2d 800 (9th Cir. 1990), *cert.*

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[5]In a previous case where no consent decree existed to require injunctive relief, *Toussaint v. McCarthy*, 926 F.2d 800, 802 (9th Cir. 1990), *cert. denied*, 112 S.Ct. 213 (1991), the Court of Appeals refused to continue court-supervised monitoring of a prison absent substantial evidence of continuing constitutional violations. Therefore, after finding no consent decree requirement for a permanent population cap or evidence of constitutional violations at WSR, the Court of Appeals followed *Toussaint*, refusing to further interfere with the operations of the state prison officials. Petition App. at A-8-9.

*denied*, 112 S. Ct. 213 (1991),[6] "presumably" for the proposition that jurisdiction should end when there are no constitutional violations. Petition at 29-30.

Actually, the record reveals quite the opposite. The first inquiry the Court of Appeals ordered on remand was "Whether the consent decree has been 'fully consummated' within the terms of the Article II thereof." Petition App. at F-1. The Court of Appeals ordered the district court to consider *Toussaint* only in the *second* inquiry, when the district court considered the appropriateness and contents of final judgment.[7]

Petitioners have constructed a "straw man". They attribute the Court of Appeals' decision on the first issue (vacating the decree) to the court's rationale for deciding the second issue (the absence of constitutional violations). However, the readily ascertainable language and reasoning of the Court of Appeals indicates that both lower courts found the decree "fully consummated" according to the *terms* of the decree, and resolved

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[6]*See infra* note 5.

[7]Final judgment was *only* appropriate if the decree was satisfied by its own terms:

> In complying with the mandate of this limited remand,the district court may take such evidence and hold such hearings as it deems appropriate. In the event the district court determines the consent decree is fully consummated, it shall enter the final judgment found appropriate under paragraph (2) hereof.

Petition App. at G-3.

the first issue based upon Respondents' fulfillment of their obligations under the decree, *not* the lack of constitutional violations. Petition App. at A-6-7. By confusing the two issues, Petitioners misrepresent the reasoning of the courts below,[8] creating the illusion of conflict with precedent.

Petitioners have not accurately presented the opinion of the court below. The Court of Appeals' decision presents no "special and important reasons" for granting the writ of certiorari. Sup. Ct. R. 10.1. Petitioners would have this Court expend its limited time reviewing reasoning never exercised below, settling a non-existent dispute. This Court has long refrained from deciding questions that are not before it, and should not make an exception here.

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[8]Petitioners also repeatedly mischaracterize Respondents' arguments below. While Respondents have argued, and continue to maintain, that jurisdiction is generally improper where no constitutional violation occurred, Respondents agree that a consent decree may confer jurisdiction even without a finding of constitutional violations. Respondents argued and proved to the courts below that no constitutional violations existed *and* that they had satisfied the terms of the consent decree itself.

Petitioners assert the Respondents' "entire appeal" in 1991 was premised on the claim that the decree must be vacated if there were no constitutional violations at WSR. However, an examination of the Respondents' brief itself reveals the Respondents' primary argument was that "under the terms of the decree the parties' agreement has been fully consummated and the decree should be dissolved." Brief at 10-23. The secondary and tertiary arguments addressed equitable and the Eleventh Amendment arguments, respectively.

Petitioners' other distortions of Respondents' arguments and the district courts' opinions, are too numerous to mention in any particularized fashion. Those arguments and opinions are not properly a subject of review by this Court, and need not be addressed further.

### B. The Court Of Appeals' Opinion Is Consistent With Other Circuits', Its Own, And This Court's Precedents.

Petitioners argue that this Court should grant a writ of certiorari because the opinion below allegedly conflicts with the prior decisions of this Court, the other circuits, and the Ninth Circuit itself. Petition at 11-43. However, the opinion below mirrored the decisions of the Court of Appeals for the Ninth Circuit and other circuits, and is consistent with the precedents of this Court.

#### 1. There is no intracircuit conflict.

The Court of Appeals' decision is consistent with its own precedent. Petitioners argue that the Court of Appeals' decision is inconsistent with and ignored *Stone v. City and County of San Francisco*, 968 F.2d 850, 862 n. 20 (9th Cir. 1992). Petition at 26.

*Stone* held that consent decrees are enforceable even without constitutional violations. Nothing in the opinion below contradicts *Stone*. In fact, the district court and Court of Appeals permitted and enforced the consent decree for roughly 12 years without finding constitutional violations. The district court dissolved the decree five years after by its own terms it was "fully consummated." As noted above, the district court entered final judgment for Respondents and terminated its supervision only when the terms of the decree required. It was

only then that the appeals court ventured to determine if there were constitutional violations; after having found none, there was no basis for jurisdiction.[9]

**2. There is no intercircuit conflict.**

Petitioners claim the case "most similar in fact and posture" to the present is *Inmates of Suffolk County Jail v. Rufo*, 12 F.3d 286 (1st Cir. 1993). Petition at 14. In *Rufo*, the Commissioner sought to vacate a consent decree based solely upon the fact that the jail was in compliance with constitutional requirements. Here, the Respondents achieved full compliance

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[9]Petitioners also criticize the Court of Appeals' decision in *Washington v. Penwell*, 700 F.2d 570 (9th Cir. 1983), apparently because it was written by the author of the opinion below. Petition at 25, 25 n. 6. Once again, Petitioners distort precedent when they claim the *Penwell* court found the decree unenforceable because it exceeded constitutional minima. In reality, the Court of Appeals held that under the appropriate Oregon rules of contract interpretation the decree was invalid because the state officials who were defendants lacked authority under the *Oregon* (not federal) constitution to enter into the decree. As the defendants had acted *ultra vires*, Oregon was not bound by the decree under the Oregon rules of contract interpretation. *Penwell*, 700 F.2d at 573. Because no valid consent decree existed, the federal courts were prohibited from exercising jurisdiction over the Oregon prison in the absence of constitutional violations. *Id.* at 573-75.

*Penwell* is quite similar to the present case. The primary difference is that the *Penwell* consent decree was a nullity *ab initio* while the consent decree in the present action was dissolved after it was fully consummated under its own terms. Once the courts determine that a consent decree has either been satisfied or does not exist, they determine whether any constitutional issues exist which would require them to maintain jurisdiction in the absence of a current, valid consent decree. *See* Petition App. at A-3-9, B-2-3, E-3; *Penwell*, 700 F.2d at 573-75; *Inmates of Suffolk County Jail*, 12 F.3d at 292 (describing the two-part test under this Court's decisions in *Dowell* and *Freeman*).

with the terms of the consent decree, and moved for its vacation as provided for by its terms.[10]

While dissimilar in fact and posture, *Inmates of Suffolk County Jail* is instructive in its reasoning. In *Inmates of Suffolk County Jail*, the United States Court of Appeals for the First Circuit interpreted *Board of Education v. Dowell*, 498 U.S. 237 (1991), and *Freeman v. Pitts*, ___ U.S. ___, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992), to state the requirements for terminating a litigated decree and returning an institution to the governance of state or local authorities:

> First, the district court must determine that the underlying constitutional wrong has been remedied, either fully or to the full extent now deemed practicable. *See Dowell*, 398 U.S. at 247, 249-50, 111 S.Ct. at 636, 637-38; *Glover*, 989 F.2d at 69. Second, there must be a determination that the authorities have complied with the decree in good faith for a reasonable period of time since it was entered. *See Freeman*, ___ U.S. ___, 112 S.Ct. at 1446; *Dowell*, 498 U.S. at 249-50, 111 S.Ct. at 637-38.

*Inmates of Suffolk County Jail*, 12 F.3d at 292.

In the present case, the courts below addressed both requirements, though in reverse order. First, they found that Respondents had complied with the terms of the consent decree,

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[10]The *Petitioners* raised the issue of continuing jurisdiction on non-decree grounds: the alleged danger of future constitutional violations. Petition App. at A-5.

which was "fully consummated". This satisfies the second requirement of *Inmates of Suffolk County Jail*.[11] Then, after Petitioners sought continued jurisdiction on the grounds that Respondents might, in the future, violate their constitutional rights, the courts below found that no such violations had occurred. Thus, Respondents met the first requirement of *Inmates of Suffolk County Jail*. Far from conflicting with the First Circuit's decisions, the Ninth Circuit's decision in the present case mirrors the reasoning of the First Circuit.

Petitioners also argue that the opinion below is inconsistent with the decisions of the D.C. Circuit, the Second Circuit, the Fourth Circuit, the Seventh Circuit, and the Tenth Circuit of the U.S. Court of Appeals. Petition at 19-24. The cases cited by Petitioners generally hold that the true measure of compliance with a consent decree is whether the parties have complied with the terms of the decree, not whether the underlying rights have been vindicated.

Here both lower courts agreed with and abided by the reasoning of the decisions of the above circuits. Respondents have satisfied the terms of the decree. Petition App. A, B. As

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[11]The decree in the present matter established its own requirements for termination. The decree had to be "fully consummated", not just complied with in good faith for a reasonable period. Thus, Respondents' full compliance with the decree, as modified to allow additional time, satisfied and exceeded the second requirement of *Inmates of Suffolk County Jail*.

a result, the courts found it "fully consummated" under the "plain language" of the decree, *not* under the Eighth Amendment. The fact that Respondents *also* complied with the Eighth Amendment suggests only that there would be no *other* basis for exercising jurisdiction.

One of the cases cited by Petitioners offers additional support for the Court of Appeals' decision. In *Twelve John Does v. District of Columbia*, 861 F.2d 295, 301 (D.C. Cir. 1988), the D.C. Circuit cited *Firefighters Local 1784 v. Stotts*, 467 U.S. 561, 574-75 (1984) for the proposition that courts "may not expand relief beyond the scope of a consent decree, even if the relief would further the purposes of the decree."

To accept Petitioners' invitation to grant relief beyond the decree, which required only a temporary reduction of the inmate population, would create a conflict where one doesn't presently exist. Petitioners' arguments that their interests would be served by an exercise of jurisdiction beyond that required by the decree are clearly irrelevant under *Local 1784*. In the present action, both lower courts refused to exercise jurisdiction beyond that required by the decree. No intercircuit conflict exists to justify a grant of the writ of certiorari.

**3. The Court of Appeals' decision is consistent with this Court's precedents.**

Petitioners claim the decision below is inconsistent with this Court's precedents. Petition at 29-34. Petitioners refer to *Rufo v. Inmates of Suffolk County Jail*, ___ U.S. ___, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992) and *Local 93, International Association of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501 (1986) for the rule that consent decrees can require more than the Constitution mandates. Petition at 29. The Court of Appeals never disagreed with that rule. In fact, the consent decree was enforced for twelve years without any finding of constitutional violations which would normally be necessary for federal jurisdiction. Neither *Rufo* nor *Local 93* are relevant because here the lower courts never held that the absence of constitutional violations invalidated the decree. Petitioners' misinterpretation of the decision below created the illusion of a conflict, as the lower courts did not invalidate the decree based upon the absence of constitutional violations.[12] Instead, both courts 1) found the decree "fully consummated",

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[12]Petitioners attempt to construe Respondents' arguments below and the decisions below together in order to claim the consent decree was decided "solely" on Petitioners' failure to point to constitutional violations. Petition at 32-33. They do so by underlining a passage from the state's motion to vacate the decree, and ignoring the rest of the quotation. Petition at 32. They claim Respondents' argument "seems" to be that once constitutional violations are cured, a federal court loses jurisdiction over the decree, contrary to *Rufo*. Petition at 32-33. In reality, Respondents' argument was, and remains, that courts should vacate consent decrees when they are "fully consummated" by their own terms. The absence of Eighth Amendment violations prevented the district court from exercising jurisdiction over the state prison after the decree was consummated, but it did *not* invalidate the decree.

and 2) refused to grant any relief beyond that contemplated by the decree based upon the lack of constitutional violations and federalism concerns. Petition App. at A-1-9, B-1-18.

Petitioners' claims of intercircuit conflict, intracircuit conflict, and conflict with this Court's previous decisions are based entirely on their misrepresentation of the opinions below. The Court of Appeals' actual decision is entirely consistent with precedent. Therefore, no conflict exists which could warrant a grant of the writ. Sup. Ct. R. 10.1(a).

### C. Both Lower Courts Properly Ruled In The Respondents' Favor.

#### 1. By its own terms, the decree was fully consummated and required dissolution.

When interpreting the terms of a consent decree, a federal court applies general contract principles using the law of the state where the agreement was made. *Collins v. Thompson*, 679 F.2d 168, 170 (9th Cir. 1982); *see also United States v. ITT Continental Baking Company*, 420 U.S. 223, 236-37 (1975). Washington follows the context rule or objective manifestation theory of contracts, which imputes to the parties a reasonable meaning of their words and acts. *Berg v. Hudesman*, 801 P.2d 222, 229 (Wash. 1990); *Siekawitch v. Washington Beef Products*, 58 Wn. App. 454, 461, 793 P.2d 994 (1990). Therefore, the Court of Appeals was required to consider the

entire circumstances under which the decree was made, as an aid in ascertaining the parties' intent. *Berg*, 801 P.2d at 229.

The only dispute concerning the decree was whether it required a "permanent population cap," a phrase that is entirely absent from the decree. The courts below both found the "clear language of the consent decree" required Respondents only to "reduce", and not to maintain, the inmate population at WSR to 656 inmates.

Petitioners use a secondary definition of "reduction" to argue the word "reduce" really means "maintain." Petition at 40-41. However, the decree itself provides a timetable; reduction would occur "between" 1981 and 1983,[13] and therefore suggests that the primary definition ("act of reducing") is the appropriate meaning of the term.

The terms within the "four corners" of the decree support the lower courts' findings. Article II specifically indicated that jurisdiction would terminate when the decree was "fully consummated." Petition App. at K-3. A decree existing in perpetuity could never be "fully consummated." The decree anticipates a "close of jurisdiction," and a time when "jurisdiction is terminated." This provision is inconsistent with

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[13]While later modified to extend the time period, the "reduction" was to occur "between those two times," December 1, 1981 and July 1, 1983. Petition App. at K-5.

Petitioners' request that the district court maintain jurisdiction indefinitely to prevent future constitutional violations. A court does not close jurisdiction by entering a permanent injunction. *See, e.g., System Federation No. 91 v. Wright*, 364 U.S. 642 (1961); *Nicacio v. United States I.N.S.*, 797 F.2d 700, 706 (9th Cir. 1985) (a court which enters an injunction retains jurisdiction).

Petitioners argue that the "final judgment incorporating the terms" of the decree must require a population cap. However, as they also point out, this Court's decision in *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 574 (1984) indicated that consent decree terms should generally not be implied, for it is "more reasonable to believe that there would have been an express provision to that effect." This Court has also emphasized that the interpretation of consent decrees should focus upon the written language of the decree. *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971).

If the parties had agreed to a permanent population cap, they would have provided for one. Instead, they wrote that Respondents would "reduce" the population "between those times", followed by a "close of jurisdiction." The final judgment did incorporate the terms of the decree, indicating that Respondents had reduced the population and otherwise satisfied the decree. There is no provision for a permanent cap, no

mention of maintaining the level beyond 1983, and no mention of a permanent injunction within the terms of the decree.

The context in which the consent decree was signed also supports the lower courts' opinions. The decree was based upon projections of inmate population extending to 1987. Even though the decree was replete with studies concerning the other subjects of the decree, there was no provision calling for continued study of population beyond 1983 or 1987. It is unreasonable to assert that the parties mutually intended to reduce the population indefinitely in the absence of any agreed language or data to support such a plan. Prisons may be renovated, expanded, or demolished. A permanent cap was inherently unworkable in light of a fluctuating inmate population and changing needs of the prison system. Respondents never intended to agree to permanent federal supervision of the state prison, and the decree does not require it.[14]

**2. Once the decree was fully consummated, the lower courts properly declined to exercise jurisdiction in the absence of constitutional violations.**

Federal courts are courts of limited jurisdiction. U.S. Const. art. III. The Eleventh Amendment affirmed the

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[14]Petitioners claim that Respondents never interpreted the language "in the way the lower courts did" until recently, based upon a June 1988 statement of Respondents' counsel. Petition at 41 n. 11. However, the statement only indicates that "the current consent order" limited the population to 656 and never mentions the prospects of a future order or permanent cap.

fundamental principle of sovereign immunity and further restrained federal jurisdiction where, as here, the real party in interest is a sovereign state, *Pennhurst v. Halderman*, 465 U.S. 89, 98, 101 (1984); *Edelman v. Jordan*, 415 U.S. 651, 663 (1974).

Prison administration is a responsibility properly entrusted to the legislative and executive branches of government, "and separation of power concerns counsel a policy of judicial restraint", particularly where a state penal system is involved. *Turner v. Safely*, 482 U.S. 78, 85 (1987); *Procunier v. Martinez*, 416 U.S. 396, 405 (1974) ("where state penal institutions are involved, federal courts have further reason for deference to the appropriate prison authorities.")

Petitioners' plea for perpetual federal court jurisdiction based upon their assertion of a danger of future constitutional violations was unfounded in both law and fact. The lower courts found no constitutional violations at WSR, and Respondents have renovated the facility, exceeding the requirements of both the decree and the Eighth Amendment. The Petitioners failed to demonstrate such any real or immediate danger of constitutional violations, and there is no danger of irreparable injury. If future constitutional violations occur, the Petitioners may seek relief in law or equity. The Petitioners were not entitled to equitable relief. *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983).

The lower courts properly refused to exercise their limited jurisdiction to interfere with prison officials beyond the consent decree. *See* Welling and Jones, *Prison Reform Issues for the Eighties: Modification and Dissolution of Injunctions*[15] *in the Federal Courts*, 20 Conn. L. Rev. 865, 892 (1988) (once the requirements for dissolution have been met, "the federal court's involvement in the state's business is overintrusive and disrupts the balance of federalism.") Dissolution "leaves defendants with the duty to comply with the law and no more and leaves to the defendants the choice of how to achieve that compliance." *Id.* at 884.

Respondents satisfied the requirements of both the Constitution *and* the consent decree. Accordingly, the lower courts properly allowed state prison officials to return to the task of running the Washington State Reformatory.

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[15]The authors' references to injunctions includes both litigated and consensual decrees. *Id.* at 885.

## III. CONCLUSION

The decisions below are in complete accord with the decisions of this and other federal courts. This case was decided upon the unique terms of a single consent decree under the appropriate Washington State rules of contract interpretation. The federalism question was properly resolved in light of this Court's precedents and admonitions that state prison officials, not federal judges, should administer state prisons. The law in this area is well-settled, and was properly followed by the Court of Appeals. This case is neither "special" nor "important," and the correct decision below requires none of this Court's limited time. Sup. Ct. R. 10.1.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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